

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

LEA G. LAND

PLAINTIFF

V.

NO. 2:96CV109-B-B

SHERATON TUNICA CORPORATION

DEFENDANT

MEMORANDUM OPINION

This cause comes before the court on the defendant's motion for summary judgment. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'... that there is an absence of evidence to support the nonmoving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the nonmovant to "go beyond the pleadings and by ... affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Rule 56(e). All legitimate factual inferences must be drawn in favor of the nonmovant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986); Matagorda County v. Russell Law, 19 F.3d 215, 217 (5th Cir. 1994). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue

for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the nonmovant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986); Fed. Sav. & Loan Ins. v. Kralj, 968 F.2d 500, 503 (5th Cir. 1992).

The court finds that there are no genuine issues of material facts regarding the claim under the Family and Medical Leave Act [FMLA], 29 U.S.C. § 2611 et seq. In response to the defendant's itemization of material facts, the plaintiff concedes that the following facts are undisputed. The plaintiff received all the maternity leave to which she was entitled and returned to her original job position of Slot Service Representative. Since no day shift schedule was available upon her return from maternity leave, the plaintiff worked different shifts for approximately three months. She lost no wages, benefits, hours or compensation, as a result of working a different shift schedule. She incurred no actual monetary loss, e.g., additional child care expense, as a result of working a different shift schedule. The plaintiff fails to submit any evidence raising a genuine issue of material fact regarding any FMLA violation or actual damages resulting from her maternity leave.¹ Therefore, the court finds that summary judgment should be entered as to the FMLA claim.

Viewing the evidence in the light most favorable to the plaintiff, the court finds that there are genuine issues of material fact regarding the remaining Title VII retaliation claim, including but not necessarily limited to whether the Committee conducted an independent investigation and whether the defendant would not have terminated the plaintiff but for her previous filing of an EEOC charge.² Therefore, the motion for summary judgment should be denied as to the Title VII

¹The plaintiff's response to the instant motion and supporting memorandum do not address the FMLA claim.

²The court notes that the defendant did not address the issue raised by the plaintiff regarding discipline of other employees for off-duty conduct. The plaintiff's affidavit is uncontroverted to

claim.

An order will issue accordingly.

THIS, the _____ day of May, 1997.

NEAL B. BIGGERS, JR
UNITED STATES DISTRICT JUDGE

the extent that it states that two employees, accompanying an employee who rolled down slot machines at another casino, were not disciplined. (Para. 16).